Oil and Gas

ANSWERS TO QUESTIONS ON NOTICE

Agency: Australian Taxation Office
Topic: Chevron case

Question:

Ms Saint: It would be concerns related to the nature of the tax issues, so concerns related to transfer mispricing, the materiality and the ongoing nature of the issues. With long-term financing, it goes for quite a long time into the future. So it has that ongoing impact as well. I think those factors combined, and the materiality—I'm not sure if I've said that one already—would all be factors that we would take into account, as well as the strength of the argument we think we've got.
Senator PATRICK: So, in relation to Chevron, you've paid $10 million approximately, or of that rough order, in legal fees. I presume you're going to get some of those back with a cost order. What was the order that was made against Chevron in terms of payment back?
Ms Saint: I would have to take that on notice.
Senator PATRICK: It was more than $100 million, wasn't it? It was quite substantial.
Ms Saint: Do you mean in terms of the cost order?
Senator PATRICK: No, not the cost order but the substantive order in relation to—
Ms Saint: Apologies. I thought you meant you were referring to the cost order.
Senator PATRICK: I probably confused you, so it's fine.
Ms Saint: No, that's okay. I will still take that on notice. I think it was significant, but I can't recall the exact amount off the top of my head.
Ms Saint: Yes, that's right, Senator. When we go and review a company, we will look at past periods. Our reviews are really based on past lodgements. For our top 100, we also look at current activities that are occurring in real time. Under the transfer pricing provisions, some of those were unlimited in terms of the time we could go back. There is now some limitations in the newer provisions that we can only go back seven years. But we absolutely would seek to review those past periods and apply the principles as we consider them to be set down by Chevron. That's typically how we would start our focus in a review or an audit, looking at those back years. For those arrangements that also have an on flow of future impacts, in any type of conversation about resolution, we will ask the taxpayer to resolve back years and also to change and lock in changes to their go-forward arrangements. So we are absolutely looking for improvements in both past and future.
Senator PATRICK: Could you take on notice, because I want the detail of this, perhaps in dollar terms, where the precedence in Chevron has caused a revisiting of past tax positions such that you've now managed to action something and get a better return? I don't want the individual companies. I'm really trying to understand the effect of the win that you've had in the court on other companies and how that has affected actual tax revenue and how it might affect tax revenue, if you've looked at modelling moving forward or predictions moving forward, the impact of that case on other companies.
Ms Saint: I can do that. Perhaps, Senator, it would help if I do share some data that we do have. Currently, we have related party borrowings under settlements in the order of about $119 billion. That's given rise to historical interest deductions no longer being claimed of around $14 billion, and a 10-year future interest deduction saved of around $26 billion. But I'm happy to confirm that on notice for you as well.

Answer:

As set out in a joint media release in April 2017, the Full Federal Court confirmed the ATO's assessment of $340 million in taxes and penalties owed by Chevron.

Orders were made, both at first instance in the Federal Court and on appeal to the Full Federal Court, for Chevron to pay the costs of the ATO (other than some minor adjustments at first instance). The orders are set out in the Federal Court and Full Federal Court decisions publicly available on the Australasian Legal Information Institute website (see *Chevron Australia Holdings Pty Ltd v Commissioner of Taxation (no. 5)* [2015] FCA 1310 and *Chevron Australia Holding Pty Ltd v Commissioner of Taxation* [2017] FCAFC 62).

Building on the precedent established in *Chevron*, Practical Compliance Guideline (PCG) 2017/4 on cross-border related party financing arrangements was published. The PCG encourages taxpayers to self-assess their related party finance arrangements to determine the likelihood that the ATO will review and dispute their transfer pricing outcomes. Taxpayers are able to mitigate the risk of dispute

by ensuring their transfer pricing outcomes come within the green zone (being a low risk or safe zone). Where we resolve disputes with taxpayers via settlement we seek to lock in future compliance behaviours. Typically, this will require the taxpayer to come within the green zone of the PCG.

We estimate agreements reached with a number of companies on the application of the transfer pricing laws to their related party financing arrangements have resulted in (as at 30 June 2021):

- a reduction of approximately $14 billion in historical interest deductions, which would otherwise have been claimed;
- approximately $119 billion in related party loans transitioning into under settlements or low-risk arrangements in accordance with PCG 2017/4;
- for the next ten years, assuming the taxpayer had continued with their historic treatment but for the ATO's intervention, an estimated reduction of at least $26 billion in interest deductions, which would otherwise have been claimed.

These agreements provide greater certainty and reduce the costs associated with ongoing compliance activity and disputes.